UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF GEORGIA STATESBORO DIVISION

UNITED STATES OF AMERICA,)	
v.)	6:10-cr-14
MOISES ARROYO-HIGUERA,)	0.10-01-14
Defendant.)	
)	

ORDER

Before the Court is Moises Arroyo-Higuera's motion to alter or amend judgment. ECF No. 33. In 2010, this Court sentenced Arroyo-Higuera to serve 71 months for reentering the United States after being deported. *See* ECF No. 25. Petitioner now seeks resentencing based on his cooperation and guilty plea early in the criminal process and the Department of Justice's nationwide implementation of the Fast-Track program in 2012. ECF No. 33 at 3.

As the Government's response correctly notes, the Court's authority "to modify an imprisonment sentence is narrowly limited by statute." *United States v. Phillips*, 597 F.3d 1190, 1194-95 (11th Cir. 2010). None of 18 U.S.C. § 3582(c)'s provisions apply here¹ and the fourteen day time period to correct "arithmetical, technical, or other clear error[s]" has passed. Fed. R. Crim. P. 35(a).

Arroyo-Higuera's only avenue for the relief he seeks is a petition for habeas corpus under 28 U.S.C. § 2255. If Arroyo-Higuera wishes to trod that path, he must affirmatively choose to do so because this Court will not construe the present motion as a § 2255 petition in light of

¹ 18 U.S.C. § 3582(c) allows sentencing courts to modify terms of imprisonment if the Bureau of Prisons files a motion asking for a reduction due to age and circumstances; if the government files a Federal Rule of Criminal Procedure 35 motion; or if the prisoner's advisory sentencing guidelines range has been lowered by retroactive amendment.

Castro v. United States, 540 U.S. 375, 383 (2003) (requiring courts to give pro se litigants notice of their intent to recharacterize a pleading as a 2255 petition in light of the restrictions on second or successive habeas petitions). Arroyo-Higuera should, however, be aware of the time limits on such petitions in deciding whether to file. See 28 U.S.C. § 2255(f)(1) (setting a one year time limit on filing, running from the day a prisoner's conviction becomes final).

The day of August, 2013

UNITED STATES DISTRICT COURT OF SOUTHERN DISTRICT OF GEORGIA